

**BBWI GENERAL PROVISIONS
FOR
ACQUISITION OF COMMERCIAL ITEMS**

SECTION A APPLIES REGARDLESS OF PRICE

A. 1 GENERAL

- 1.1 The terms and conditions of these General Provisions and those set forth in the BBWI purchase order (Order) or subcontract (terms used interchangeably) apply notwithstanding any different or additional terms and conditions submitted or proposed by Seller, and BBWI objects to and shall not be bound by any such additional or different terms and conditions. Seller must determine what provisions should be inserted in its Lower-tier subcontracts and purchase orders to implement the obligations of Seller to BBWI. By entering into this Order, Seller recognizes these obligations and agrees to implement them in its Lower-tier subcontracts and purchase orders.

To assist Seller in determining what provisions to insert in its Lower-tier subcontracts and purchase orders, articles containing passdown requirements are denoted in **bold-face** print.

- 1.2 The failure of either party to enforce at any time any of the provisions of this Subcontract or to require at any time performance by the other party of any of such provisions shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Subcontract or any parts thereof, or the right of either party thereafter to enforce each and every provision.
- 1.3 In the event of an inconsistency between provisions of this Subcontract, the inconsistency shall be resolved by giving precedence as follows: (i) Purchase Order or Subcontract; (ii) statement of work; (iii) these General Provisions; and (iv) other provisions of this Subcontract, whether incorporated by reference or otherwise. However, Subcontractor shall notify the Contractor prior to performing work based on resolution of an inconsistency by the order of precedence set forth herein.

A. 2 INCORPORATED BY REFERENCE

All articles incorporated by reference are those in effect on the date of this Order.

- | | | |
|-------------|--------------------------------|--|
| 2.1 | <u>FAR 52.203-7</u> | Anti-Kickback Procedures |
| 2.2 | <u>FAR 52.219-8</u> | Utilization of Small Business Concerns |
| 2.3 | <u>FAR 52.222-26</u> | Equal Opportunity |
| 2.4 | <u>FAR 52.222-35</u> | Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans |
| 2.5 | <u>FAR 52.222-36</u> | Affirmative Action for Workers with Disabilities (>\$10k) |
| 2.6 | <u>FAR 52.222-41</u> | Service Contract Act of 1965 |
| 2.7 | <u>FAR 52.223-3</u> | Hazardous Material Identification and Material Safety Data |
| 2.8 | <u>FAR 52.247-63</u> | Preference for U.S. – Flag Air Carriers |
| 2.9 | <u>FAR 52.247-64</u> | Preference for Privately Owned US-Flagged Commercial Vessels |
| 2.10 | <u>DEAR 952.5204-59</u> | Whistleblower Protection for Contractor Employees |

A. 3 DEFINITIONS

As used throughout this Order, except in articles incorporated by reference and where otherwise indicated, the following definitions apply:

"Government" means the United States of America or any duly authorized representative thereof;

"DOE" means the U.S. Department of Energy;

"Subcontractor" and "Seller" mean the business entity contracted to provide the materials, supplies or services covered by this Order;

"Commercial item" (see FAR 52.202-1 for complete definition);

"Contractor" means BBWI or its duly authorized representative;

"Contracting Officer" means the Contractor-authorized Procurement Agent and procurement management personnel;

"Lower-tier Subcontractor" means any party entering into an agreement with the Subcontractor or any other party who has entered into a contract with the Subcontractor, for the furnishing of supplies or services required for performance of this Order.

A. 4 CHANGES

Changes in the terms and conditions of this Order may be made only by written agreement of the parties.

A. 5 MATERIALS AND WORKMANSHIP

5.1 New Materials

Unless otherwise specifically approved by the Contractor, all equipment, materials, or products, including those components, parts, and materials which are permanently installed into systems, subsystems, and/or assemblies, shall be new and of the grade/type specified by this Order. No mixed manufacturers', or manufacturing production, lots will be accepted. All workmanship shall be performed in a skillful and workmanlike manner consistent with the stated requirements and other applicable criteria of this Order.

5.2 Suspect/Counterfeit Materials

The following materials furnished under this Order will be used in a U.S. Government-owned facility and shall be manufactured domestically, i.e., within the United States of America:

Fasteners

Fasteners, as defined in Title 15, United States Code (U.S.C.) Chapter 80, Section 5402 of the Fastener Quality Act, that are delivered to the Contractor, under this Order shall meet the "Testing and Certification of Fasteners" requirements specified in Section 5404 (a), (b), and (c) of the Act, by a laboratory accredited in accordance with the procedures and conditions specified in Section 5405.

Fasteners shall exhibit grade marks and the manufacturer's identification symbol (headstamp) as specified in the referenced Material Specification. Fasteners having a headmark which is displayed on U.S. Customs Service Suspect Fastener Headmark List will not be accepted.

Electrical Items

Electrical items shall exhibit manufacturers' labels and identification as specified in the referenced specification or in the body of the Order.

Mechanical Items

Mechanical items shall exhibit manufacturers' labels and identification as specified in the referenced specification or in the body of the Order.

- 5.3 Evidence of deliberate misrepresentation of any item(s) and/or component(s) and/or material(s) provided under this Order may result in an investigation to determine the validity-of-certification, fraud, and/or forgery.

A. 6 APPROVALS

The granting of approvals by the Contractor of any data submitted by Subcontractor under this Order shall not affect, or relieve Subcontractor from, compliance with this Order.

A. 7 PASSAGE OF TITLE AND LIENS

- 7.1 Title to deliverables shall pass at the place of delivery to Contractor. If purchased F.O.B. origin, delivery to the carrier shall be deemed to be delivery to Contractor.
- 7.2 Seller agrees to furnish deliverables free and clear of all liens, claims, and encumbrances. Seller agrees to hold Contractor and the Government harmless from all liens, claims, or demands in connection with the Work.

A. 8 DELIVERY AND PAYMENT

- 8.1 Unless otherwise specified in this Order, a separate invoice shall be issued upon each delivery of Supplies or completion of Services, and shall be payable by Contractor upon receipt of Supplies or completion of Services and receipt by Contractor of a correct invoice therefore. Credit and discount periods shall be computed from the date such invoice is received to the date Contractor's check is mailed. Unless freight and other charges are itemized, the discount will be taken on the full amount of invoice.
- 8.2 The Contractor will not accept price adders for the cost of providing insurance against risk of loss in transit. If the Subcontractor chooses to insure its risk of loss in transit, the cost of same must be included in the order price. The Contractor is self-insured as to its risk of loss in transit and there is no authorization to the Subcontractor to procure any insurance against that risk for the account of the Contractor.

A. 9 INSPECTION

- 9.1 Seller shall perform, or have performed, all inspections and tests necessary to substantiate that the Supplies or Services furnished under this Order conform to Order requirements, including any applicable technical requirements for specified manufacturers' parts.
- 9.2 Contractor has the right either to reject or to require correction of nonconforming Supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Order requirements. Contractor may reject nonconforming Supplies with or without disposition instructions.
- 9.3 Rejection of non-conforming work shall be made as promptly as practicable after delivery, except as otherwise provided in this Order; but failure to inspect or reject work shall neither relieve Subcontractor from responsibility for such work as is not in accordance with the Order requirements nor impose liability upon the Contractor.
- 9.4 Inspections and tests by Contractor do not relieve Seller of responsibility for defects or other failures to meet Order requirements.

A.10 ASSIGNMENT

Neither this Order nor any interest herein nor claim hereunder shall be assigned or transferred by the Subcontractor, except as expressly authorized in writing by the Contractor. This Order may be assigned by the Contractor to the U.S. DOE or to DOE's designee(s).

A. 11 FEDERAL, STATE, AND LOCAL TAXES

Except as may be otherwise provided in this Order, the order prices include all applicable federal, state, and local taxes and duties. The Contractor is exempt under Idaho law from the payment of certain Idaho sales or use taxes and is authorized by agreement with the state of Idaho department of revenue and taxation to pay directly to the state of Idaho any sales and use taxes owing on purchases of tangible personal property. Therefore, the order price shall not include Idaho sales or use tax for any tangible personal property purchased hereunder.

A.12 COMPLIANCE WITH LAWS

Except as otherwise directed by the Contractor, the Subcontractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this Order is performed.

A. 13 DISPUTES

- 13.1 The parties agree that the appropriate forum for resolution of any unresolved dispute of claim pertaining to this Order shall be the Federal District Court, with venue in the U.S. District Court for the District of Idaho in Pocatello, Idaho. In the event the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, with venue in the District Court of the Seventh Judicial District for the District of Idaho in Idaho Falls, Idaho.
- 13.2 Any substantive issue of law in dispute shall be determined in accordance with the law of the State of Idaho, except an issue involving a Federal Acquisition Regulation clause(s), which shall be determined in accordance with federal procurement law. Nothing in this Article shall grant to the Subcontractor by implication any statutory rights or remedies not expressly set forth in this Order.
- 13.3 Nothing in this Article 13 shall preclude the use of an alternate dispute resolution (ADR) process(es), as agreed by the Parties. Any ADR process mutually accepted shall take place in Idaho Falls, Idaho.
- 13.4 There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this Order pending final resolution of any dispute, claim, or litigation, arising under, or related to, this Order, between the parties hereto or between the Subcontractor and Lower-tier Subcontractors or suppliers.
- 13.5 The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this Order; provided, however, nothing in this Article shall prohibit BBWI, at its sole discretion, from sponsoring a claim of the Subcontractor for resolution under the provisions of its prime contract with DOE. In the event that BBWI sponsors a claim at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as BBWI.

A. 14 DEFAULT

- 14.1 Contractor may, subject to Paragraphs 14.3 and 14.4 of this Article, by written notice of default to Seller, terminate this Order in whole or in part if Seller fails to: (i) deliver the Supplies or to perform the Services within the time specified in this Order or any extension; (ii) make progress, so as to endanger performance of this Order; or (iii) perform any of the other provisions of this Order.
- 14.2 If Contractor terminates this Order in whole or in part, it may acquire, under the terms and in the manner Contractor considers appropriate, supplies or services similar to those terminated, and Seller shall be liable to Contractor for any excess costs for those supplies or services. However, Seller shall perform the work not terminated.
- 14.3 Except for defaults of lower-tier Subcontractors at any tier, Seller shall not be liable for any excess costs if the failure to perform this Order arises from causes beyond the control and without the fault or negligence of Seller.

Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of Seller.

- 14.4 If the failure to perform is caused by the default of a Lower-tier Subcontractor at any tier, and if the cause of the default is beyond the control of both Seller and the Lower tier Subcontractor and without the fault or negligence of either, Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for Seller to meet the required delivery schedule.
- 14.5 If this Order is terminated for default, Contractor may require Seller to transfer title to the Government and deliver to Contractor, as directed by Contractor, any (1) completed Supplies, and (2) partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this Article) that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Contractor, Seller shall also protect and preserve property in its possession in which Contractor or the Government has an interest.
- 14.6 Contractor shall pay the order price for conforming Supplies delivered. Seller and Contractor shall agree on the amount of payment for manufacturing materials delivered and for the protection and preservation of the property. Failure to agree will be a dispute under the "Disputes" article. Contractor may withhold from these amounts any sum it determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders.
- 14.7 If, after termination, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Contractor.
- 14.8 The rights and remedies of Contractor in this Article are in addition to any other rights and remedies provided by law or under this Order.

A. 15 TERMINATION FOR CONVENIENCE

Contractor reserves the right to terminate this subcontract, or any part hereof, for the convenience of itself or the Government. In the event of such termination, the Subcontractor shall immediately stop all work terminated and shall immediately cause any and all of its affected suppliers and Lower-tier subcontractors to cease work. Subject to the terms of this Order, the Subcontractor shall be paid a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Subcontractor can demonstrate to the satisfaction of the Contractor using its standard record keeping system, have resulted from the termination. The Subcontractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This Article does not give the Contractor or the Government the right to audit the Subcontractor's records. The Subcontractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

A. 16 WARRANTY

- 16.1 Subcontractor warrants that the supplies shall be free from defects in material and workmanship, of the most suitable grade of their respective kinds for the purpose, and comply with all requirements set forth in this Order, until one year after first placed into service by Contractor, or three years after acceptance, whichever first occurs. Subcontractor shall correct any nonconformity with this warranty at its sole expense, as directed by Contractor, by promptly (i) repairing or replacing the nonconforming supplies specified (and correcting any plans, specifications, or drawings affected); (ii) furnishing Contractor any materials, parts, and instructions necessary to correct or have corrected the nonconformity, or (iii) paying to Contractor a portion of the order price as is equitable under the circumstances.
- 16.2 If Subcontractor fails to perform its obligations promptly under this Article, Contractor may perform, or have performed; such obligations and Subcontractor shall pay Contractor all charges occasioned thereby.

- 16.3 The warranty with respect to corrected supplies or services shall be subject to the same terms as the warranty provided for in Paragraphs 16.1 and 16.2 of this Article. The warranty for corrected or replaced supplies or services shall continue until the expiration of such period plus a period equal to the time elapsed between the discovery of the nonconformity and its correction.
- 16.4 Unless installation is an element of the work, Subcontractor shall not be obligated under this Article for the costs of removal or reinstallation of any supplies furnished or items serviced hereunder from the location of their installation, or for the costs of removal or reinstallation of structural parts or items not furnished by Seller hereunder. Subcontractor shall, in any event, bear all packing, packaging, and shipping costs to the Subcontractor's plant and return and shall bear all risk of loss or damage for the items upon which services have been performed or supplies while in transit.

A. 17 AUTHORIZATION AND CONSENT

- 17.1 The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture in the performance of this Order, or any part hereof, or any amendment hereto, or any Lower-tier Subcontract hereunder, of any invention described in and covered by a patent of the United States, and that is:
- a. embodied in the structure or composition of any article the delivery of which is accepted by the Government under this Subcontract, or
 - b. utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Subcontractor, or the using Lower-tier Subcontractor, with (i) specifications or written provisions now or hereafter forming a part of this Subcontract, or (ii) specific written instructions given by the Contractor directing the manner of performance.
- 17.2 The entire liability to the Government and the Contractor for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this Subcontract, or any Lower-tier Subcontract hereunder, and the Government assumes liability for all other infringement to the extent of the authorization and consent herein granted.

A. 18 PATENT INDEMNITY

- 18.1 Subcontractor shall indemnify the Government and Contractor and their officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy order under 35 U.S.C. 181) arising out of the manufacture or delivery of Supplies, the performance of Services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this Subcontract, or out of the use or disposal by or for the account of the Government or Contractor of such Supplies or construction work.
- 18.2 This indemnity shall not apply unless Subcontractor shall have been informed as soon as practicable by the Government or Contractor of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to: (i) an infringement resulting from compliance with specific written instructions of Contractor directing a change in the Supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of this Subcontract not normally used by Subcontractor; (ii) an infringement resulting from addition to or change in Supplies furnished or construction work performed that was made subsequent to delivery or performance or; (iii) a claimed infringement that is unreasonably settled without the consent of Contractor, unless required by final decree of a court of competent jurisdiction.

SECTION B APPLIES WHEN SERVICES ARE TO BE INCLUDED, REGARDLESS OF PRICE

B. 1 A. 9 INSPECTION, is amended to include:

9.5 If any of the Services do not conform with Order requirements, Contractor may require Subcontractor to perform the Services again in conformity with Order requirements, at no increase in Order amount. When the defects in Services cannot be corrected by re-performance, Contractor may (i) require Subcontractor to take necessary action to ensure that future performance conforms to Order requirements and (ii) reduce the Order price to reflect the reduced value of the Services performed." [FAR 52.222-41, Service Contract Act of 1965]

B. 2 A. 16 WARRANTY, is amended to include:

16.5 Subcontractor warrants that the Services shall reflect the highest standards of professional knowledge and judgment, shall be free from defects in workmanship, and shall be in compliance with all requirements of this Order, until one year from the completion of the Services. Subcontractor shall correct any nonconformity with this warranty at its sole expense, as directed by Contractor, by promptly (i) reperforming the nonconforming Services or (ii) paying to Contractor a portion of the order price as is equitable under the circumstances.

SECTION C APPLIES WHEN ON-SITE SERVICES ARE TO BE INCLUDED, REGARDLESS OF PRICE

C.1 INCORPORATED BY REFERENCE:

FAR 52.237-2 Protection of Government, Buildings, Equipment and Vegetation (APR 1984)

C. 2 OCCURRENCE NOTIFICATION AND REPORTING BY SUBCONTRACTOR

Subcontractor shall report to Contractor any unusual occurrence or unplanned event occurring within the boundaries of the Contractor's facilities during the performance of this Order. The report shall be provided, either orally or in writing, to a Contractor Buyer or Subcontract Administrator or Technical Representative. Occurrences/events which require reporting include any out-of-the-ordinary situations which occur. A list of situations that require reporting will be provided to Subcontractor by Contractor prior to Subcontractor's arrival on-site. The list will not be all inclusive, but will provide necessary guidance.

C. 3 ENVIRONMENTAL, SAFETY AND HEALTH AND INDEMNIFICATION

Environment, Safety and Health

The Subcontractor shall take all reasonable precautions in the performance of the work under this Order to protect the safety and health of employees and of members of the public and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of Contractor and DOE. The Contractor shall notify the Subcontractor, in writing, of any noncompliance with the provisions of this Article and what corrective action is to be taken. After receipt of such notice, the Subcontractor shall immediately take the corrective action. Under Orders acquiring maintenance, installation, fabrication or related services, or under any Order when directed by the Contractor, Subcontractor shall, at its discretion; (1) accept and implement the Contractor's ES&H management program and implementation plan, which is available from the Contractor, or, (2) prepare and submit to the Contractor for approval, an ES&H management plan within five days of award of an Order, with the understanding that work may not be initiated on site until Contractor approval has been granted. In the event that the Subcontractor fails to comply with the aforementioned regulatory requirements of Contractor and DOE, the Contractor may, without prejudice to any other legal or contractual rights of the Contractor, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the Contractor. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

Indemnification

(WHEN APPLICABLE, I.E., ANY OR ALL WORK IS TO BE PERFORMED AT CONTRACTOR-CONTROLLED FACILITIES, THIS ARTICLE SUPERSEDES ARTICLE A.12, COMPLIANCE WITH LAWS)

At its expense, the Subcontractor shall comply with all federal, state, county, and municipal laws, ordinances, and regulations applicable to the work to be performed, and Subcontractor must secure all required licenses or permits prior to commencing work. Subcontractor shall indemnify and hold harmless the Contractor, Bechtel BWXT Idaho, LLC, and the Government from all damages of any nature whatsoever that the foregoing parties may incur as a result of Subcontractor's failure to comply with all federal, state, county, and municipal laws, ordinances, and regulations applicable to the work or Subcontractor's failure to secure all required licenses or permits prior to commencing work and to comply with such licenses or permits throughout the course of the work. Subcontractor also agrees, if requested, to assume, at its own expense, the defense of suits that may be filed against the Contractor, Bechtel BWXT Idaho, LLC, or the Government as a result of Subcontractor's failure to comply with all applicable federal, state, county, and municipal laws, ordinances, or regulations or Subcontractor's failure to secure and comply with any required licenses or permits.

The Subcontractor agrees to indemnify and hold harmless the Government, the Contractor, Bechtel BWXT Idaho, LLC, and each of their respective officers, directors, employees, agents, contractors, and successors in interest from all liability, fines, civil penalties, claims, remediation, corrective action or other response action costs, and any associated expenses (including costs of defense, settlement, reasonable attorneys fees, and costs incurred in enforcing this indemnification) that any of the foregoing may incur as a result of: injury, death, or damage to persons or property; contamination of, or adverse effects on, the environment; or any violations or alleged violations of federal, state, or local statutes, ordinances, laws, orders, rules or regulations related to the Subcontractor's work at the INEEL, including, but not limited to, the following federal laws (and any state or federal implementing laws or regulations): the Clean Water Act as amended, 33 U.S.C.A., Section 1251 et seq. (including, but not limited to, liability for fines incurred by the indemnified parties for Subcontractor's violations of the Construction Storm Water Discharge Regulations or Requirements); the Comprehensive Environmental Response Compensation and Recovery Act as amended, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act as amended, 42 U.S.C. Section 6901 et seq.; the Clean Air Act as amended, 42 U.S.C. Section 7401 et seq.; the Toxic Substances Control Act as amended, 15 U.S.C.A. 2601 et seq.; the Atomic Energy Act as amended (including, but not limited to, DOE orders and ALARA requirements) 42 U.S.C.A 2014 et seq.; and the Price Anderson Amendments Act of 1988 as amended, 42 U.S.C. Section 2210 (including, but not limited to, applicable nuclear safety regulations, requirements or orders). This indemnification also covers the preceding types of liabilities that arise from, or are related to, the Subcontractor's generation and management of, or arranging the transportation, treatment, storage, or disposal of waste generated at the INEEL at a treatment, storage or disposal facility of other location that has not been approved in writing by Contractor's Procurement Agent.

Subcontractor also indemnifies and holds harmless Contractor for all proceeding costs incurred by Contractor as defined at DEAR 970.6204-61, **COST PROHIBITIONS RELATED TO LEGAL AND OTHER PROCEEDINGS**.

Subcontractor shall flow down this Article in its entirety, including this paragraph, and all Environmental, Safety, and Health requirements, for the protection of the indemnified parties, in all Lower-tier Subcontracts..

C. 4 HAZARDOUS MATERIALS BROUGHT BY SUBCONTRACTOR ONTO THE CONTRACTOR'S PREMISES

(Resource Conservation and Recovery Act (RCRA) and SARA Title III reporting requirements. This Article is applicable when Subcontractor uses or transports SARA reportable chemicals on the Contractor's premises.)

For all work to be performed at Contractor facilities, Subcontractor shall comply with all environmental laws, including the requirements of RCRA, 42 U.S.C. Sections 6901 et seq. Pursuant to the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499) Subcontractor shall be responsible for reporting to the Subcontract Administrator/buyer all hazardous chemicals brought onto the Contractor's premises.

The Subcontractor shall prepare and submit to the Contractor a report each quarter (the first Monday of January, April, July and October) for SARA reportable chemicals used or transported on the Contractor's premises. The required reporting is limited to those SARA reportable hazardous chemicals within the definition found in 29 CFR 1910.1200. Specific lists for Extremely Hazardous Substances can be found in the Appendices of 40 CFR Part 355 and in 40 CFR 372 for toxic chemicals. Specific exemptions from these reporting requirements for chemicals and substances listed or defined can be found in 40 CFR 370. The report is to be provided on the appropriate form that can be obtained from the Contractor's Subcontract Administrator upon request.

C. 5 SUBCONTRACTOR'S RESPONSIBILITY

As to the work to be done or performed by Subcontractor on premises owned or controlled by Contractor or the Government or the premises of other Contractor Subcontractors, Subcontractor shall indemnify and hold harmless the Government and Contractor, their officers, agents and employees, from and against any claim, cause of action, cost, damages, expense (including attorney's fees) and liability whatsoever (hereinafter, "claim"), including any costs or expenses incurred in enforcing this indemnity, arising in any manner from injury to, or death of, any person or from damage to, or destruction of, any property, or from any loss of fee suffered by Contractor under its Prime Contract with DOE, attributable to the conduct of Subcontractor or its Lower-tier Subcontractors, agents, or employees under this Subcontract. The indemnification shall extend, to but is not limited to, any such claim maintained in tort against the Government or Contractor for negligence or otherwise concerning any injury or death of an employee of Subcontractor which was, or could have been, the basis for a statutory worker's compensation claim. In order to make fully effective the foregoing indemnification, Subcontractor hereby expressly waives the exclusive remedy and indemnity limitation under the Idaho worker's compensation law of Title 72 of the Idaho Code or under any other applicable state or federal worker's compensation law. Nothing in the foregoing shall be construed to require Subcontractor to indemnify and save harmless the Government or Contractor from any liability arising out of or resulting from a nuclear incident or solely as a result of negligence of the Government and Contractor or either of them.

SUBCONTRACTOR shall procure or cause to be procured at its own expense and shall likewise maintain or cause to be maintained, while any work is being performed and for such period hereafter as may be necessary under the circumstances, insurance sufficient to protect SUBCONTRACTOR, CONTRACTOR, CONTRACTOR's Subcontractors and the U. S. Department of Energy against all liability with respect to bodily injury or death, or property loss or damage which may be imposed by law upon SUBCONTRACTOR or which is assumed by SUBCONTRACTOR under the Subcontract. Such insurance shall be written on an "occurrence" basis and shall be with companies with an AM Best rating of "A" or better and in such forms as are satisfactory to Contractor. At a minimum, Subcontractor shall maintain the following insurance coverages and limits under this Article:

Commercial General Liability

Each occurrence: \$1 million
Fire Damage (any one fire): \$100,000
Medical Expense (any one person): \$5,000
Personal and Advertising Injury: \$1 million
General Aggregate: \$2 million
Products/Completed Operations Aggregate: \$2 million

Automobile Liability

Combined Single Limit (each accident): \$1 million

Worker Compensation and Employer Liability

Worker Compensation: Statutory Limits
Employer Liability (each accident): \$100,000
Employer Liability Disease/Each Employee: \$100,000
Employer Liability Disease/Policy Limit: \$500,000

Asbestos Liability (If work includes any asbestos-related work, whether inspection, handling, removal or otherwise)

Per Occurrence/Annual Aggregate: \$2 million

The Subcontractor's policies shall be endorsed to include the following benefits:

- i) "Bechtel BWXT Idaho, LLC and its successors in interest" and the "U. S. Department of Energy" named as additional insured parties (for all coverages specified in this Article, including Workers Compensation and Employer Liability coverages).**
- ii) A waiver of subrogation in favor of Bechtel BWXT Idaho, LLC and its successors in interest and the U. S. Department of Energy.**
- iii) The Subcontractor's insurance is primary**
- iv) Thirty days prior written notice to Contractor in the event of cancellation.**

Certificates of insurance shall be furnished to the Subcontract Administrator upon the earlier of either of the following: I) within ten calendar days after award of the contract, or ii) before Subcontractor begins any work on Contractor controlled property or facilities. The insurance certificates (for all coverages specified in this Article, including Worker Compensation and Employer Liability coverages) shall name "Bechtel BWXT Idaho, LLC and its successors in interest" and the "U. S. Department of Energy" as additional insured parties. Failure to comply with the insurance requirements in this Article, including timely submission of certificates, shall be a basis for default termination. Subcontractor shall not be relieved of liability assumed pursuant to this Article by reason of procurement, maintenance, limits, or coverages of any insurance policies, whether or not approved by Contractor.

SUBCONTRACTOR shall insert the substance of this Article (Paragraphs 1 through 4) in lower-tier subcontracts under the subcontract that requires work on a Government installation and shall require Lower-tier subcontractors to provide and maintain the insurance required in this Article or elsewhere in the subcontract. SUBCONTRACTOR shall maintain a copy of all Lower-tier subcontractor's proofs of required insurance and shall make copies available to the Subcontract Administrator upon request.

If more than one insurance company is involved, separate certificates must be provided by each such company. Certificates will not be acceptable unless all the listed coverages are provided in at least the amounts specified herein, with required endorsements. Certificates must be signed by an authorized representative of the insurance company whom shall indicate the capacity in which it is signing.

Subcontractor agrees to comply (and require its Lower-tier Subcontractors to comply) with all applicable laws, rules, and regulations with respect to state industrial insurance or Workers/Workmen's Compensation, occupational disease, occupational safety and health, or withholding and payment of social security and federal income taxes and further agrees to indemnify Contractor and the Government against, and to save and hold harmless Contractor and the Government from, any and all liability and expense with respect to claims against Contractor or the Government which may result from the failure or alleged failure of Subcontractor or of any to its Lower-tier Subcontractors to comply therewith.

Subcontractor and its Lower-tier Subcontractors shall comply with all applicable orders, rules, and/or regulations of Contractor, Contractor's subcontractors, and the Government while at a facility or on property under their individual or collective control.

C. 6 ABILITY TO WORK

Individual employees of the Subcontractor and its Lower-tier Subcontractors are required to notify their immediate manager of (1) work restrictions imposed by the defined medical program resulting from any medical/physical condition or (2) of any medication being taken which may impact the safety of themselves, their coworkers or the public. Their manager will ensure proper work accommodation or referral to appropriate medical care facilities. Management will, in addition, refer employees to the appropriate medical providers for health evaluation when: (1) the manager identifies behavior or a condition he/she, in good faith, believes to be

health related which could impact safety; or (2) an employee requests a medical evaluation due to potential impact on work assignments and/or safety and health. Managers, supervisors or employees who identify behavior or conditions creating an imminent hazard to health and safety shall take whatever steps are reasonably necessary to correct the condition, including stopping the work. Confidentiality of medical information (related to the evaluation) must be preserved; only work restrictions imposed by the defined medical program will be reported to the manager. Managers may not request diagnostic related information. Company policy prohibits retaliation or retribution resulting from compliance with this policy.

SECTION D APPLIES WHEN THE PRICE EXCEEDS \$500,000

D. 1 INCORPORATED BY REFERENCE:

FAR 52.219-9 Small Business Subcontracting Plan

End of Document